



U.S. Citizenship and Immigration Services

Draft Memorandum for Comment



USCIS seeks your input on the draft memoranda listed below. These memoranda are drafts of proposed or revised guidance to USCIS Field Offices and Service Centers. They are not intended as guidance for the general public, nor are they intended to create binding legal requirements on the public. Until issued in final form, the draft memoranda do not constitute agency policy in any way or for any purpose.

- [Approval of Petitions and Applications after the Death of the Qualifying Relative; New INA Section 204\(l\) updates the AFM with New Chapter 20.6 and an Amendment to Chapter 21.2\(h\)\(1\)\(C\)](#) (Final date for comments: **June 1, 2010.**)
- [Extension of U Nonimmigrant Status for Derivative Family Members Using the Application to Extend/Change Nonimmigrant Status \(Form I-539\) Revisions to Adjudicator's Field Manual \(AFM\), New Chapter 39.1\(g\)\(2\)\(i\) \(AFM Update AD10-08\)](#) (Final date for comments: **June 1, 2010.**)
- [William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to Adjudicator's Field Manual \(AFM\) Chapters 23.5 and 39 \(AFM Update AD10-38\)](#) (Final date for comments: **June 1, 2010.**)
- [Clarifying Guidance on "O" petition Validity Period Revisions to the Adjudicator's Field Manual \(AFM\) Chapter 33.4\(e\)\(2\) AFM Update AD10-36](#) (Final date for comments: **May 24, 2010.**)

Each memorandum is available for comment for ten business days after posting. The final date for comments is after each link.

Comment Process: Please email all comments to opefeedback@uscis.dhs.gov. Please put the title of the relevant memorandum in the subject line of your message. The most helpful comments will refer to a specific portion of the memorandum, explain the reason for any recommended change, and include data, information, or authority that support the recommendation. USCIS may distribute any comments received (including any personal information and contact information) on its public website or to those who request copies. By providing comments, you consent to their use and consideration by USCIS, and you acknowledge that your comments may become public. USCIS cannot guarantee that it will acknowledge or respond to any comments submitted.

Background and Additional Legal Information: Final field guidance documents have previously

ALLA InfoNet Doc. No. 10051766. (Posted 05/17/10)

been available for public review on USCIS's website (www.uscis.gov) as part of the Adjudicator's Field Manual (AFM). In a new effort to promote transparency and consistency in USCIS operations, the Agency will now periodically post drafts of new or revised draft memoranda for public comment to assist USCIS in improving immigration services. Some memoranda will not be posted, e.g., those containing information that is law enforcement sensitive, confidential, or otherwise protected from disclosure under the Freedom of Information Act. USCIS is not required to solicit public comment on the draft memoranda under the Administrative Procedure Act, nor does this informal comment process replace any statutory or other legal requirement for public comment on agency action.

Last updated: 05/17/2010

DRAFT FOR COMMENT ONLY

Posted: 05-17-2010

Comment Period Ends: 06-01-2010

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

**U.S. Citizenship
and Immigration
Services**

PM-602-XXXX

Policy Memorandum

SUBJECT: Extension of U Nonimmigrant Status for Derivative Family Members Using the Application to Extend/Change Nonimmigrant Status (Form I-539)
Revisions to Adjudicator's Field Manual (AFM), New Chapter 39.1(g)(2)(i) (AFM Update AD10-08)

Purpose

This Policy Memorandum (PM) authorizes the Vermont Service Center (VSC) to approve an Application to Extend/Change Nonimmigrant Status (Form I-539) to extend U nonimmigrant status for a derivative family member whose initial period of stay is less than four years.

Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

Authority

Sections 214(a)(1), 214(p)(6), and 245(m) of the Immigration and Nationality Act (INA); 8 U.S.C. §§ 1184(a)(1), 1184(p)(6), and 1255(m), as amended; and 8 CFR 214.14(g).

Background

8 CFR 214.14(g)(2) permits a derivative U nonimmigrant to request an extension of status using Form I-539 when the derivative is unable to enter the United States timely due to a delay in consular processing. The regulations are silent about any other situations in which a derivative U nonimmigrant may extend his or her status beyond the U nonimmigrant status of the principal (i.e., beyond the time of the principal's adjustment to lawful permanent residency).

There are, however, additional factors other than a delay in consular processing that may, in the interest of family unity, warrant an extension of the derivative's status beyond that of the principal. For example, delays in promulgating the U nonimmigrant regulations, delays in clarifying fee waiver authority for required inadmissibility waivers, and multi-track processing of principal and derivative petitions (Forms I-918 and I-918A, respectively) resulted in many derivatives receiving an initial nonimmigrant status period of less than three years. Nevertheless, all U nonimmigrants, including derivatives, must accrue at least three years in U nonimmigrant status before they may apply to adjust status to that of a lawful permanent resident under section 245(m) of the INA.

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Posted: 05-xx-2010

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Therefore, extensions of status may be necessary to ensure that the derivatives are able to attain at least three years in U nonimmigrant status for purposes of adjustment to lawful permanent residency.

Policy

This PM clarifies that adjudicators at the VSC may consider delays other than consular processing as a valid basis for an extension of status. To preserve the derivative family member's eligibility to adjust status, the VSC may approve a Form I-539 to extend U nonimmigrant status for a derivative family member whose initial period of stay is less than four years. The extension should not exceed four years in the aggregate.

Nothing in the INA or relevant regulations precludes USCIS from extending the stay of a derivative U nonimmigrant in cases where the principal U nonimmigrant has already adjusted status to that of a lawful permanent resident. In fact, the statutory and regulatory scheme appear to contemplate treating the U principal and U derivatives separately once the U derivative has been initially admitted in the U nonimmigrant classification. Specifically, the text of both sections 214(p)(6) and 245(m) of the INA apply to all U nonimmigrants equally and not just to principal petitioners. By contrast, provisions such as sections 214(o) and 245(l) of the INA, which were enacted at the same time as the U nonimmigrant provisions, explicitly differentiate between the principal and his or her derivative family members. Further, the U nonimmigrant regulations at 8 CFR 214.14(g) contemplate granting extensions of status for derivatives beyond the expiration date of the principal U nonimmigrant's status. Together, these provisions lead USCIS to conclude that it may, in its plenary authority under section 214(a)(1) of the INA, promulgate regulations regarding the conditions of admission of nonimmigrants and may, consistent with Congressional intent, extend the U nonimmigrant status of derivative family members even when the principal U nonimmigrant has already adjusted status.

This guidance shall be retroactive to December 23, 2008, the date the President signed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457. Further, the provisions of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) shall apply in the processing or handling of these and any other applications or petitions filed by the beneficiary of a U nonimmigrant petition.

Implementation

U nonimmigrant derivatives seeking to extend their status should file their Form I-539, justification for extension, filing fee, and supporting documents directly with the VSC regardless of geographical jurisdiction. Supporting documents should include evidence of U status for both principal and derivative, showing all dates in that status; evidence of adjustment of status of the principal (if applicable); evidence of relationship with U visa principal; and applicant's statement of need and reason(s) for extension. Petitioners should also check the USCIS website under "I-539,

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Application To Extend/Change Nonimmigrant Status” for detailed instructions regarding this specific category.

Any other service center, field office, the National Benefits Center, or USCIS Lockbox facility that receives an I-539 U visa extension request should forward the entire application packet to VSC without issuing a receipt notice, receipting any filing fee, or conducting any data entry. The Victims and Trafficking Unit at VSC will be solely responsible for these functions. Upon receipt of a Form I-539, VSC will evaluate the request in accordance with all applicable regulations and policies.

Adjudicator's Field Manual Update

The Adjudicator's Field Manual (AFM) is revised to include new Chapter 39.1(g)(2)(i):

* * *

(2) Extension of status.

(i) Where a U nonimmigrant's approved period of stay on Form I-94 is less than 4 years, he or she may file Form I-539, "Application to Extend/Change Nonimmigrant Status," to request an extension of U nonimmigrant status for an aggregate period not to exceed 4 years. If a qualifying family member requests an extension of status beyond the expiration of the principal U-1 nonimmigrant's status, USCIS may approve the extension for any reason that is consistent with the goals of the statute, including but not limited to a situation where the qualifying family member is unable to enter the United States timely due to delays in consular processing, and where an extension of status is necessary to ensure that the qualifying family member is able to attain at least 3 years in nonimmigrant status for purposes of adjusting status under section 245(m) of the Act, 8 U.S.C. 1255.

The AFM **Transmittal Memorandum** button of the AFM is revised by adding, in numerical order, the following entry:

AD10-08 [DATE]	Chapter 39.1(g)(2)(i)	This memorandum revises AFM Chapter 39.1(g) to clarify that the status of a U-1 or a dependent of a U-1 nonimmigrant may be extended for any valid reason that is consistent with the goals of the statute and not merely to overcome a consular processing delay.
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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate supervisory channels to the Service Center Operations Directorate the Office of Policy and Strategy.